

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.320/05

Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

CORAM : A.P. Lavande,J
DATE : 16th August, 2006

Heard Mr. V. K. Paliwal, learned counsel appearing
on behalf of the appellants.

2. By this appeal, the appellants take exception to the Judgment and decree dated 22nd December, 2004 passed by the Fourth Ad hoc Additional District Judge, Buldana in Regular Civil Appeal No. 22 of 2001 filed by the appellants against the Judgment and decree dated 4.10.2000 passed by the Second Joint Civil Judge, Jr. Dn., Buldana in Regular Civil Suit No. 178/95. The respondent filed the above suit against the appellants for partition and separate possession in respect of the suit property. In the said suit, the appellants filed counter claim against the plaintiff seeking declaration that the another property purchased by the plaintiff by sale-deed dated 24.7.1992 from Syed Yasin was not the exclusive property of the plaintiff but joint family property. The trial Court after appreciating the evidence led by the parties decreed the suit and held that the plaintiff was

entitled to 1/5th share in the suit property and, therefore, directed partition of the suit property. The trial Court rejected the counter claim of the defendants. The trial Court held that the said property which was the subject matter of the counter claim was not a joint family property but was the property of the plaintiff himself purchased by him out of his own funds. Against the Judgment and decree passed by the trial Court the defendant preferred the above appeal. The said appeal was preferred mainly on the ground that the trial Court ought to have allowed the counter claim filed by the defendants. The appellate Court after appreciating the evidence led by the parties held that the finding of the trial court that the property which was the subject matter of the counter claim was not a joint family property but the same was purchased by the plaintiff from his own funds, was correctly recorded. Consequently, the appeal filed by the defendant was dismissed.

3. Mr. Paliwal, learned counsel appearing for the appellants submitted that both the courts below erred in law in holding that the property which was the subject matter of the counter claim was the exclusive property of the plaintiff by ignoring the cogent evidence led by the defendants that the said property was purchased by the plaintiff from the income derived from the joint family property. He further submitted that in the absence of

any partition between the co-owners the trial court as well as appellate court ought to have held that the said property was the joint family property and not the property of the plaintiff.

4. Having considered the submissions made by the learned counsel and having perused the Judgments given by both the courts below, I am unable to accept the submissions made by Mr. Paliwal. The trial Court upon appreciation of the evidence led by the parties came to the conclusion that the said property could not be held to be joint family property since the plaintiff was having his own income and the parties were residing separately. The said finding arrived at by the trial Court which has been confirmed by the lower appellate court cannot be said to be perverse warranting interference in second appeal. In any case, in my opinion, no substantial question of law is involved in the appeal. Hence, the appeal is rejected in limine.

Judge

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